HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 05, 2015
84th Legislature, Number 63
The House convenes at 10 a.m.

Forty-five bills are on the daily calendar for second-reading consideration today. The bills analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

The House will consider a Local, Consent, and Resolutions calendar.

Alma Allen
Chairman
84(R) - 63

HOUSE RESEARCH ORGANIZATION

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Tuesday, May 05, 2015
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SUBJECT: Taxation related to the creation of the Hidalgo County Healthcare District

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — Coleman, Farias, Burrows, Romero, Spitzer, Wu

0 nays

3 absent — Schubert, Stickland, Tinderholt

WITNESSES: For — Ramiro Garza, City of Edinburg; Bobby Villarreal, Hidalgo County Judge Ramon Garcia; Aaron Barreiro; Staphany Ortega; (*Registered, but did not testify*: Richard Garcia, City of Edinburg; Amber Hausenfluck, City of McAllen; Jim Allison, County Judges and Commissioners Association of Texas; Chuck Girard, Hospital Corporation of America; Donald Lee, Texas Conference of Urban Counties; Jennifer Banda, Texas Hospital Association; and Dan Finch, Texas Medical Association)

Against — None

On — (*Registered, but did not testify*: Martin Baylor, the University of Texas Rio Grande Valley)

BACKGROUND: HB 3793 by Coleman, enacted by the 83rd Legislature in 2013, provided for the development of a voter-approved hospital district in Hidalgo County. Special District Local Laws Code, ch. 1122 currently requires a ballot proposition on the question of creating the Hidalgo County Hospital District to specify that the creation of the district would provide for the imposition of an ad valorem tax at a rate not to exceed 75 cents on each $100 valuation on all taxable property in the district.

DIGEST: HB 1596 would change the name of the proposed hospital district in Hidalgo County, lower the cap on the taxation rate under the proposed hospital district, specify the composition and role of the district's board of directors, and provide for the transfer of funds from the Commissioners Court of Hidalgo County to the proposed hospital district.

Hidalgo County Healthcare District. The bill would remove references in statute to the Hidalgo County Hospital District and replace them with the Hidalgo County Healthcare District. The bill would specify that the Hidalgo County Healthcare District would be financed as a hospital district.

The bill would specify that the healthcare district would have full responsibility for providing medical and hospital care for the district's indigent residents in addition to its other responsibilities as required under the bill, another applicable statute, and the state constitution.

Ballot proposition and taxation rate. The bill would change the wording in statute for a ballot proposition on the question of creating the Hidalgo County Healthcare District to specify that the creation of the district would provide for the imposition of an ad valorem tax at a rate not to exceed 25 cents on each $100 valuation on all taxable property in the district, rather than 75 cents. The ballot proposition would specify that district funds would be used for district purposes, including:

- improving health care services for residents of Hidalgo County;
- supporting the School of Medicine at the University of Texas Rio Grande Valley;
- training physicians, nurses, and other health care professionals;
- obtaining federal or state funds for health care services; and
- providing community health clinics, primary care services, behavioral and mental health care services, and prevention and wellness programs.

Unless a higher rate of taxation was approved at an election, the tax rate on all taxable property in the district could not exceed 25 cents on each $100 valuation of property. The healthcare district's board could order an election to increase the district's maximum ad valorem tax rate to a rate greater than the maximum rate of 25 cents per $100 property valuation.

The board could impose taxes at the rate authorized by a proposition if the majority of voters voted in favor of the proposition in the election. The

bill would specify the proposition language for such an election. The bill would not authorize the board to impose taxes at a higher rate than 75 cents per $100 valuation, the maximum ad valorem tax rate authorized by Tex. Const., Art. 9, sec. 9. The election would not have to be held on certain days as required by Election Code, sec. 41.001(a).

If the board adopted a tax rate that exceeded the rollback tax rate calculated as provided by Tax Code, ch. 26, related to appraisal and assessment, the qualified voters in the district could petition to require that an election be held to determine whether or not to reduce the tax rate adopted by the board for that year to the rollback tax rate. The board would ensure that all healthcare district residents would receive all ad valorem tax exemptions and limitations that the residents are entitled to receive under the Constitution. The bill would require the board to adopt an exemption from ad valorem taxation by the district of a portion of the appraised value of a district resident's residence homestead, as provided by Tax Code, sec. 11.13(d). The amount of the exemption required to be adopted by the board under the bill would be $3,000 of the appraised value of a district resident's homestead.

The district could not enter into an agreement to participate in reinvestment zone designated by a municipality or a county under Tax Code, ch. 311, the Tax Increment Financing Act.

Healthcare district board. The bill also would specify the composition, qualifications, appointment process, and terms of the nine-member, appointed board of directors for the proposed Hidalgo County Healthcare District. An employee of a municipality located in the healthcare district would not be eligible for appointment to the board, and neither would a person who was related within the third degree by blood or affinity to a member of the Commissioners Court of Hidalgo County, a member of the governing body of a municipality located in the district, an employee of Hidalgo County, an employee of a municipality located in the healthcare district, or a district employee. If a board member vacated a position, the person or governing body that appointed the vacating board member would appoint a new person to fill that position.

The board would manage, control, and administer the healthcare district.

The board would determine the type, number, and location of buildings required to maintain an adequate healthcare district and the type of equipment necessary to provide medical care in the district. The board could adopt rules governing the operation of the district and any district hospital, in addition to other rule-adoption allowed in current statute. The board also could acquire property, facilities, and equipment for use by the district.

The bill would require the board and the district administrator to jointly prepare a proposed annual budget for the district. The budget would be effective only after it was adopted by the board and approved by the Hidalgo County Commissioners Court. A proposed amendment to the budget could be adopted only if it was adopted by the board and approved by the Hidalgo County Commissioners Court.

The bill would allow the board to issue and sell general obligation bonds to equip buildings or improvements for district purposes. The board could issue revenue bonds for district purposes rather than for hospital or hospital system purposes.

Transfer of funds. On the creation of the Hidalgo County Healthcare District, or as soon as practicable after the district was created, the Commissioners Court of Hidalgo County would transfer to the district all operating funds and any funds held in reserve for operating expenses that had been budgeted by the county to pay the costs associated with administering a county program to provide to residents of the district indigent care assistance during the fiscal year in which the district was created.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 1596 is a local bill to amend statute to provide protection to local taxpayers if a tax district was created in the future with voter approval. The bill is necessary to allow Hidalgo County to cover health care needs for the insured and uninsured residents of the county and to reduce the burden on taxpayers.

Last session, HB 3793 by Coleman was enacted to allow for a voter-approved hospital district. HB 1596 would add safeguards to the existing statute to ensure protections for property taxpayers. Creating a healthcare district through this bill would allow Hidalgo County to improve its indigent care program and reduce the local tax burden by accessing federal funds for healthcare through the sec. 1115 federal Medicaid waiver, which the county would not be able to do without the creation of a hospital district. If a hospital district does not exist in Hidalgo County, taxpayers would have to pay for healthcare needs that otherwise would be funded through federal funds.

In other parts of the state, a healthcare district has proven crucial to the growth of a medical school. The bill would change the name of the proposed district to the Hidalgo County Healthcare District from the Hidalgo County Hospital District to reflect that, if approved by voters, the district would encourage the growth of the Rio Grande Valley's newly authorized medical school. Making clear that the district was health care focused, not just hospital focused, would reflect the fact that the healthcare district, along with the medical school, would create thousands of new jobs, attract health-related business to the valley, and bring much-needed healthcare providers to an underserved area.

Current law provides a tax rate cap of 75 cents per $100 property valuation. HB 1596 would reduce this cap to 25 cents in statute as well as in the proposed ballot proposition language regarding the creation of the healthcare district, further protecting taxpayers. The bill also would protect taxpayers by requiring any tax proposal from the district's board to be approved by the elected county commissioners, ensuring proper oversight and allowing veto power over a budget proposed by a healthcare district's board. The bill would require the healthcare district to provide for all the proper tax exemptions for a residence homestead of a fully disabled veteran or the disabled veteran's surviving spouse.

The board of directors for the Hidalgo County Healthcare District would be appointed by the Hidalgo County Commissioners Court and the governing entities of the municipalities in the healthcare district, who are elected and also would be accountable to the public for their

appointments.

OPPONENTS SAY:

HB 1596 would create a board of directors for the proposed Hidalgo County Healthcare District that would be appointed, rather than elected, and would have the power to tax property owners. The unelected board would not be sufficiently accountable to taxpayers and could be overly open to influence from outside funders.

SUBJECT: Requiring home-rule municipalities to use bond proceeds as intended

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 7 ayes — Parker, Longoria, Capriglione, Flynn, Landgraf, Pickett, Stephenson

0 nays

WITNESSES: For — Bill Bailey; (*Registered, but did not testify*: Peggy Venable, Americans for Prosperity; Jess Fields, Texas Public Policy Foundation; Joe Palmer)

Against — None

On — Clayton Chandler, City of Mansfield; Bill Longley, Texas Municipal League; (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi)

BACKGROUND: Tex. Const., Art. 11, secs. 4 and 5 designate municipalities as either general-rule or home-rule cities. General rule cities are governed by laws of the state, while home-rule cities are governed by laws and ordinances that they have adopted in their charter. Any city with more than 5,000 residents may choose to adopt a charter and become a home-rule city.

Government Code, ch. 1332 permits Texas municipalities to use the proceeds of a bond raised for a specific purpose for other reasons if the specific purpose already has been accomplished or abandoned and there is a surplus left over. Before a municipality can spend the surplus for another purpose, it is required to hold an election to approve the proposed use of the unspent proceeds.

DIGEST: HB 156 would prohibit the governing body of a home-rule municipality from holding an election to repurpose the unspent proceeds of a bond raised for a specific purpose. The home-rule municipality could use the unspent proceeds of a municipal bond raised for a specific purpose only for the purpose stated in the bond or to retire the outstanding bonds.

The bill would take effect September 1, 2015, and would apply only to municipal bonds authorized after that date.

SUBJECT: Prohibiting vendor contact with ISD trustees during procurement

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Bohac, Deshotel, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Dutton, Farney

WITNESSES: For — Al Arreola, South San Antonio Chamber of Commerce; Stacey Estrada, South San Antonio ISD School Board; (*Registered, but did not testify*: Lindsay Gustafson, Texas Classroom Teachers Association; Portia Bosse, Texas State Teachers Association; Monty Exter, The Association of Texas Professional Educators)

Against — Grover Campbell, Texas Association of School Boards

On — Lisa Dawn-Fisher, Texas Education Agency; (*Registered, but did not testify*: Von Byer, Texas Education Agency)

BACKGROUND: Education Code, secs. 44.031(b) and 44.0351 authorize school districts to use competitive bidding to select vendors for certain services and require a district to award a competitively bid contract to the bidder offering the best value. In determining the best value, the district is not restricted to considering price alone but may consider other factors, including the reputation of the vendor, quality of the vendor's goods and services, the vendor's past relationship with the district, and other factors.

DIGEST: CSHB 1486 would apply only to school districts located in a county that met the description in the bill (Bexar County). Trustees of those districts would be prohibited from having direct or indirect communication outside of a public board meeting with an actual or prospective bidder or offeror during the period after the district had issued a request for proposals (RFP) or bid advertisement and before the board had awarded the contract. The board would be required to reject a prospective vendor's bid

or offer if prohibited contact with a trustee occurred.

A trustee would be allowed to communicate with an actual or prospective bidder or offeror if the trustee had a substantial interest in a business entity or in real property and complied with Local Government Code requirements pertaining to the regulation of conflicts of interest and:

- the communication related to the business entity's response to the district's RFP or bid advertisement; or
- the communication related to the real property offered in response to the district's RFP or bid advertisement.

Communication also would be allowed between trustees and bidders or offerors registered as participants at a trade show or convention if at a public board meeting the trustee disclosed that the communication occurred and did so no later than one week after the communication occurred or the date on which the board voted on the RFP or bid advertisement, whichever was earlier.

This bill would take effect September 1, 2015, and would apply only to a contract for which the RFP or bid was issued on or after that date.

SUPPORTERS SAY:

CSHB 1486 would help avoid perceptions of "back room deals" by preventing school board trustees in Bexar County from having communications with prospective bidders during the procurement process. The perception of corruption in awarding contracts undermines the public's trust in the management of local schools. The bill would codify what is considered a best practice by other local governmental entities to bar discussions between purchasing decision-makers and potential vendors.

The bill would increase transparency by requiring that communication between trustees and potential vendors be conducted in open meetings where the public could be informed of the contracting process. Trustees would not be prevented from sharing their expertise with a prospective vendor, but they would have to do so in a public meeting.

Trustees could still discuss goods and services with registered vendors at

trade shows and conventions as long as they disclosed such communication at a public meeting.

OPPONENTS SAY:

CSHB 1486 would add unnecessary restrictions on communications between school trustees and prospective vendors. Texas has existing laws on purchasing and conflicts of interest that could be used to sanction wayward board members. Trustees could be referred to law enforcement for investigations of contracting irregularities.

Trustees inadvertently could engage in prohibited contacts because they might not always know if the district had an outstanding RFP that did not go through the board. Trustees who have expertise with a specific product or service for which their district is seeking bids could be restricted from sharing their knowledge with bidders or offerors. This could prevent the district from receiving bids from vendors who could offer the best value to the district.

SUBJECT: Capping the liability for passenger services on certain freight tracks

COMMITTEE: Transportation — committee substitute recommended

VOTE: 9 ayes — Pickett, Martinez, Burkett, Fletcher, McClendon, Murr, Paddie, Phillips, Simmons

2 nays — Y. Davis, Israel

1 absent — Harless

WITNESSES: For — Charles Emery, Denton County Transportation Authority; (*Registered, but did not testify*: Byron Campbell, Drew Campbell, Brandi Bird, and Jim Cline, Denton County Transportation Authority; Vic Suhm, Tarrant Regional Transportation Coalition)

Against — Steve Bresnen, Texas Trial Lawyers Association

On — (*Registered, but did not testify*: Eric Gleason, Texas Department of Transportation)

BACKGROUND: Transportation Code, sec. 460.110 gives coordinated county transportation authorities the ability to purchase insurance to cover the liability of the authority's operations and of its contractors.

DIGEST: CSHB 1944 would limit the aggregate liability of the Denton County Transportation Authority and the rail owners from which it rents tracks to $125 million for all damage claims arising from a single incident involving the provision of passenger rail services under an agreement between the authority and the railroad.

The bill would not affect certain limits and liability for damages under other law, including the federal Employer's Liability Act. The transportation authority would be required to obtain insurance coverage for the liability with the railroad named as an insured party.

With respect to the use of eminent domain by an authority, the bill would

require that any relocation assistance be provided as required under the Relocation Assistance Program specified in Property Code, sec. 21.046. The bill also would amend the Transportation Code to comply with the limits on no-bid contracts specified in Local Government Code, sec. 252.021(a).

The bill would take effect September 1, 2015, and would apply only to a condemnation hearing in which the petition was filed on or after that date.

SUPPORTERS SAY:

CSHB 1944 would help the Denton County Transportation Authority (DCTA) expand its services to better serve North Texas. The Dallas-Fort Worth region continues to grow, and DCTA needs to grow along with it. To expand its rail services, DCTA needs to use right-of-way and tracks owned by BNSF Railway. Before BNSF will enter into an agreement with DCTA, it needs a limitation on its liability.

The $125 million cap is reasonable, given the scale of the potential operation. The Trinity Rail Express, also in the Dallas-Fort Worth area, has had its liability capped at a similar amount for many years, which has proved to be adequate for metropolitan commuter rail.

The cost of insuring operations up to $200 million in damages is far too high and would make operations unaffordable.

OPPONENTS SAY:

CSHB 1944's $125 million cap on liability is too low to protect DCTA passengers, the surrounding property owners, and the public from potential damages that could result from the railroad's operations. Railroad disasters are expensive, and it is difficult to anticipate how much damage a crash may cause. The liability cap should be raised to around $200 million, which would better reflect the potential for damages.

The bill should not allow damages to DCTA to be covered under the liability cap. Legislation that limits liability needs to ensure that insurance covers passengers and other third parties.

SUBJECT: Regulation of prescribed pediatric extended care centers

COMMITTEE: Public Health — committee substitute recommended

VOTE: 11 ayes — Crownover, Naishtat, Blanco, Coleman, Collier, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

WITNESSES: For — Duane Galligher, Pediatric Health Choice (*Registered, but did not testify*: Daniel Leeman)

Against — (*Registered, but did not testify*: Angela Smith)

On — (*Registered, but did not testify*: Chris Adams and Calvin Green, Department of Aging and Disability Services; Lisa Carruth, Michael Ghasemi, Pam McDonald, and Laurie VanHoose, Health and Human Services Commission)

BACKGROUND: Health and Safety Code, ch. 248A, defines a "prescribed pediatric extended care center" to mean a facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

In 2013, the 83rd Legislature enacted SB 492 by Lucio, which established a regulatory framework for prescribed pediatric extended care (PPEC) centers. During the interim, some have called for further clarification of issues in the enacted legislation regarding PPEC center liability issues, the PPEC center reimbursement rate, and questions about whether a parent or guardian needed to be present when a child receives services at a center. Some also have called for the Department of Aging and Disability Services (DADS) to use a licensing process for the PPEC centers similar to the two-step process used at the department for licensing an assisted living facility, which involves allowing one but not more than three residents to be admitted to the facility after DADS determines that the

building meets certain requirements.

DIGEST:

CSHB 2340 would require a person to hold an initial, renewal, or temporary license to own or operate a PPEC center in the state. An applicant for a PPEC center license could not provide services under that license until DADS issued the license. A separate initial, renewal, or temporary license would be required for each center located on separate premises.

The bill would allow an applicant to apply for an initial PPEC center license in accordance with existing rules for a PPEC center license in Health and Safety Code, sec. 248A.052. An applicant for an initial license could request that DADS issue a temporary license pending the department's review of the applicant's application for an initial license. An applicant would not be required to request a temporary license to receive an initial or renewal license.

Under the bill, a temporary license would authorize an applicant to provide nonresidential basic services for up to six minors until the temporary license expired or was terminated. On receipt of a temporary license request, DADS would conduct a review of the applicant's policies, procedures, and staffing plans to serve minors in the center. The bill would allow DADS to grant an applicant's request for a temporary license if the department determined that the applicant was eligible for the license. An applicant would be eligible for a temporary license only if the applicant met:

- the license application requirements for an initial license;
- the building requirements and standards for a PPEC center provided in department rules adopted under Health and Safety Code, ch. 248A; and
- the requirements of DADS' review of the applicant's policies, procedures, and staffing plans.

An initial or renewal license would expire on the second anniversary of the date of issuance. A temporary license would expire on the earlier of 90 days after the date the temporary license was issued or the last day of any extension period granted by the department, or the date an initial license

was issued. The bill would prohibit DADS from granting more than one extension of a temporary license and from granting an extension for more than 90 days. The bill would require DADS to grant an extension if the temporary license holder submitted to the department an extension request in the manner prescribed by the department within 30 days before the date the temporary license would expire.

DADS could take an enforcement action against a temporary license holder for failure to comply with Health and Safety Code, ch. 248A related to PPEC centers and the rules adopted under the bill. The bill also would allow DADS to conduct a complaint investigation and inspection of a temporary license holder.

The bill would require nursing services provided by a center to be a one-to-one replacement of private duty nursing or other skilled nursing services unless additional nursing services were medically necessary. The bill also would specify that a minor client's parent, legal guardian, or managing conservator would not be required to accompany the client to the center when:

- the client received services in the center, including therapy services delivered in the center but billed separately; or
- the center transported or provided for the transport of the client to and from the center.

The bill would require the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement the bill. As soon as practicable after September 1, 2015, the executive commissioner would establish a reimbursement rate for licensed PPEC centers that were enrolled in Medicaid that, when converted to an hourly rate, would not be more than 70 percent of the average hourly unit rate for private duty nursing provided under the Texas Health Steps Comprehensive Care Program, Medicaid's comprehensive preventive child health service (medical, dental, and case management) for individuals from birth to 20 years old.

The bill would require a state agency to request a federal waiver or authorization if the agency determined that such a waiver or authorization

was necessary for implementation of a provision of the bill. The agency affected by the provision could delay implementing that provision until the waiver or authorization was granted.

The changes in law made by the bill related to temporary licenses would apply only to a temporary license application submitted to or an inspection conducted by DADS on or after September 1, 2016.

The bill would take effect September 1, 2015.

SUBJECT: Creating lane restrictions for commercial vehicles in highway work zones

COMMITTEE: Transportation — favorable, without amendment

VOTE: 11 ayes — Pickett, Martinez, Burkett, Y. Davis, Fletcher, Harless, Israel, Murr, Paddie, Phillips, Simmons

0 nays

1 absent — McClendon

WITNESSES: For — (*Registered, but did not testify*: Jennifer Newton, AGC of Texas)

Against — None

On — (*Registered, but did not testify*: John Barton, TxDOT)

BACKGROUND: Transportation Code, ch. 545 provides laws for the safe operation of vehicles, including commercial vehicles. "Commercial motor vehicle," as defined by sec. 548.001, includes vehicles designed to carry passengers or cargo that have a gross weight between 26,000 and 48,000 pounds, carry 15 or more passengers, or carry hazardous materials that require placards under the federal Hazardous Materials Transportation Act.

Sec. 472.022 defines a "construction or maintenance work zone" as a portion of highway or street where highway construction or maintenance is being undertaken, other than mobile operations as defined by the Texas Manual on Uniform Traffic Control Devices.

Highway work zones can present safety hazards due to narrowed lanes and reduced visibility resulting from barriers and sharp turns. Because of their size, commercial vehicles can make work zones even more hazardous.

DIGEST: HB 3225 would allow the Texas Department of Transportation (TxDOT) to confine the operation of commercial motor vehicles to a specific lane within a construction or maintenance work zone if a traffic study

conducted by the department indicated that such a restriction was necessary to improve road safety. TxDOT could rescind a lane restriction if it determined the restriction was no longer needed.

If TxDOT designated a lane for commercial vehicles, it would be required to erect signs or other traffic control devices to indicate which lane was for commercial vehicles. HB 3225 could not be enforced if these devices were not in place.

The lane restriction would expire if the lane was no longer in a work zone. If TxDOT rescinded a lane restriction or the restriction expired, the agency would be required to remove the signs and other traffic control devices indicating the lane restriction.

This bill would take effect September 1, 2015.

SUBJECT: Exempting agencies from paying interest of $5 or less on late payments

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 20 ayes — Otto, Ashby, Bell, Burkett, Capriglione, S. Davis, Giddings, Gonzales, Howard, Hughes, Koop, Márquez, McClendon, R. Miller, Phelan, Raney, J. Rodriguez, Sheffield, VanDeaver, Walle

0 nays

7 absent — Sylvester Turner, G. Bonnen, Dukes, Longoria, Miles, Muñoz, Price

WITNESSES: For — None

Against — None

On — Brian Ragland, Texas Department of Transportation

BACKGROUND: Government Code, sec. 2251.026 makes state agencies liable for interest that accrues on overdue payments for goods and services. The interest must be paid at the same time that the principal is paid. Sec. 2251.026(j) prohibits interest from accruing and being paid by institutions of public higher education if the interest totals $5 or less.

DIGEST: HB 3601 would prohibit interest from accruing and being paid on overdue payments for goods and services bought by a state agency if the interest totaled $5 or less.

The bill would take effect September 1, 2015, and would apply only to the accrual of interest on or after that date.

SUBJECT: Establishing certification requirements for sign language interpreters

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Raymond, Rose, Keough, S. King, Naishtat, Peña

2 nays — Klick, Spitzer

1 absent — Price

WITNESSES: For — Dennis Borel, Coalition of Texans with Disabilities; Heather Hughes, Deaf Action Center; Larry Evans and David Myers, Texas Association of the Deaf; and seven individuals; (*Registered, but did not testify*: Ryan Hutchison, Communication Service for the Deaf; Betty Bounds, Texas Association of the Deaf; Beth Hamilton)

Against — Rhoda Hockett, Thomas Kelchner, and Janna Lilly, TCASE Texas Council of Administrators of Special Education; Marina Hench, Texas Association for Home Care and Hospice; (*Registered, but did not testify*: Melva V. Cardenas, Texas Association of School Personnel Administrators)

On — (*Registered, but did not testify*: Lori Breslow and Jamie Jones, DARS)

BACKGROUND: Human Resources Code, ch. 81 establishes the Texas Commission for the Deaf and Hard of Hearing. The commission provides, among other services, a registry program for qualified interpreters for the deaf and an optional interpreter certification program.

DIGEST: CSHB 1069 would require that interpreters for the deaf and hard of hearing, who currently must be "qualified," be "certified." The Department of Assistive and Rehabilitative Services (DARS) would have to develop requirements to specify circumstances under which interpreters would be qualified to interpret as well as requirements for trilingual interpreter certification.

CSHB 1069 would dissolve the Board for Evaluation of Interpreters and replace it with the interpreter certification program.

The bill would prohibit a person from practicing, offering or attempting to practice, or holding that person out to be practicing as an interpreter for persons who were deaf or hard of hearing unless the person was certified. DARS could suspend the certificate of a person who violated the requirements related to certification. The executive commissioner of the Health and Human Services Commission (HHSC) could adopt rules related to the investigation and enforcement of uncertified persons. The certification requirements would not apply to:

- a person interpreting in religious, family-oriented, or other social activities as authorized by DARS;
- a person interpreting in certain emergency situations involving health care services;
- a person enrolled in a course of study leading to a certificate or degree in interpreting who clearly was designated as a student or trainee and engaged only in activities that constituted part of a supervised course of study;
- a person who was not a resident of Texas but who was licensed or certified in another jurisdiction or by an entity recognized by DARS, under certain time limitations;
- a person who engaged in video relay interpreting; or
- a person interpreting in another setting as determined by DARS.

The bill would waive a prerequisite examination for obtaining a certificate or a provisional certificate for a person who held an interpreter's license or certificate issued by another jurisdiction or an entity recognized by DARS that had licensing or certification requirements similar to Texas. A person obtaining a certificate would pay a fee for the certificate in an amount determined by the HHSC executive commissioner.

CSHB 1069 would remove the ability of a person who was certified in Texas, but who had moved to and was practicing in another state, to obtain a new certificate without reexamination.

The certification requirements would apply to court interpreters and would be in addition to the requirements of Government Code, ch. 57, which governs the certification of court reporters for hearing-impaired individuals.

DARS could impose an administrative penalty of up to $5,000 per violation on a person who violated the certification requirements. Each day a violation continued or occurred would be penalized as a separate violation. When imposing such a penalty, DARS would be required to consider:

- the seriousness of the violation;
- the economic harm caused by the violation;
- the history of previous violations;
- the amount necessary to deter a future violation;
- efforts to correct the violation; and
- any other consideration that justice might require.

The HHSC executive commissioner would adopt rules necessary to implement these provisions. DARS could reinstate the certificate of a sanctioned interpreter who demonstrated to the department that he or she had remedied the problem and was capable of resuming practice in compliance with the requirements of the law.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 1069 would protect and improve the lives of the deaf and hard of hearing population by requiring certification of interpreters. This would ensure that interpreters were qualified, skilled professionals. Because the current certification program is voluntary, unqualified individuals can be hired to provide this necessary service. There are consequences to using unqualified interpreters, particularly in medical and legal situations, and it places an undue burden on family members to interpret in these situations.

CSHB 1069 not only would benefit the deaf and hard of hearing, but it would protect those who procure interpreters' services, such as health care organizations, schools, and other private and public entities. These entities do not always have the tools to assess the quality of an interpreter's services. CSHB 1069 would mitigate the risks for those hiring interpreters by mandating that interpreters be certified.

The bill would not amount to government overregulation. The government already regulates a variety of professions, and this bill involves regulating a particularly important professional service.

Deaf and hard of hearing individuals often receive only the choice between accepting an unqualified interpreter or not receiving services. Because interpreter certification currently is not required, providers and consumers cannot determine an interpreter's qualifications and cannot submit feedback on the interpreter's performance. These conditions might explain why interpreter quality has not improved on its own. Professionalizing interpreting through CSHB 1069 would attract more qualified people to the industry, thereby mitigating the alleged shortage of certified interpreters in the state.

While there are concerns that the bill would burden procurers of interpreting services, especially those who might struggle to find certified interpreters, those needing interpreting services often are choosing to hire uncertified interpreters because they are less expensive. In this way, the uncertified interpreters have a competitive advantage over those who actually are qualified. Also, there are viable technological solutions to the issue of finding certified interpreters, such as video remote interpreting.

OPPONENTS SAY:

CSHB 1069 would be an unnecessary expansion of government resulting in overregulation. It also could further constrain the availability of sign language interpreters.

The new certification requirements in the bill could result in a shortage of interpreters. Currently, very few interpreters, after completing their two to three years of interpreter training, immediately pass certification. There are few training opportunities through which interpreters can develop the fluency that will allow them to pass their entry-level certification.

The bill could have other unintended consequences, especially in the medical community. The bill could lead to delays in the delivery of care because a health care provider would have to find a certified interpreter in certain situations.

CSHB 1069 also would be a burden on rural communities and school districts that already have trouble finding sign language interpreters. The bill would strain an already scarce resource by requiring schools and other entities to hire certified interpreters.

SUBJECT: Regulating e-cigarettes and banning their sale to minors

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Crownover, Blanco, Coleman, S. Davis, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

2 absent — Naishtat, Collier

WITNESSES: For — Josiah Neeley, R Street Institute; Ryan Van Ramshorst, Texas Pediatric Society, Texas Medical Association; Larriann Curtis, Texas PTA; (*Registered, but did not testify*: Marshall Kenderdine, Texas Academy of Family Physicians; Nelson Salinas, Texas Association of Business; Rebekah Schroeder, Texas Children's Hospital; Lon Craft, TMPA; Melody Chatelle, United Ways of Texas; Shannon Kemp; Katharine Ligon)

Against — Andrew Westerkom, Texas E-Cigarette and Vaping Association

On — Gavin Massingill, Altria; Schell Hammel, SFATA; Ernest Hawk, UT MD Anderson Cancer Center; (*Registered, but did not testify*: Kaitlyn Murphy, American Heart Association; Winfred Kang, Texas Comptroller of Public Accounts; Barry Sharp, Texas Department of State Health Services)

BACKGROUND: Health and Safety Code, ch. 161, subch. H regulates the distribution of cigarettes or tobacco products. In addition to other provisions, this subchapter prohibits the sale of cigarettes or tobacco products to persons younger than 18 years old. Ch. 161, subch. N prohibits minors from possessing, purchasing, consuming, or accepting cigarettes or tobacco products. The chapter provides penalties for these offenses.

Education Code, sec. 38.006 and Penal Code, sec. 48.01 regulate the use of tobacco products on school property.

DIGEST:

CSHB 170 would apply to e-cigarettes the similar provisions that regulate cigarettes and tobacco products under Health and Safety Code, ch. 161, subch. H, related to distribution of cigarettes or tobacco products. The bill also would apply to e-cigarettes the same provisions that apply to the use of tobacco products on school property under Education Code, sec. 38.006 and Penal Code, sec. 48.01. In addition, the bill would:

- add a definition for "e-cigarette";
- require the Department of State Health Services to create a report on the use of e-cigarettes in the state;
- regulate the sale of liquid containing nicotine; and
- add requirements for delivery sales of e-cigarettes.

Definitions. CSHB 170 would define an "e-cigarette" to mean an electronic cigarette or any other device that simulated smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device. The term would not include a prescription medical device unrelated to the cessation of smoking. The term would include a device of the aforementioned description regardless of whether the device had another name or description and would include a component, part, or accessory of the device.

Sale of e-cigarettes to minors. CSHB 170 would prohibit the sale of e-cigarettes to persons younger than 18 years old under the same statutory provisions that currently apply to cigarettes and tobacco products in Health and Safety Code, ch. 161, subch. H, related to the distribution of cigarettes or tobacco products. As with cigarettes or tobacco products, it would be a class C misdemeanor (maximum fine of $500) for a person, with criminal negligence, to sell, give, or cause to be sold or given an e-cigarette to someone who was younger than 18 years old. The bill also would prohibit a person from selling, giving, or causing to be sold or given an e-cigarette to someone who was younger than 27 years old unless the person to whom the e-cigarette was sold or given presented an apparently valid proof of identification.

If an offense occurred in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products were sold at

retail, the employee would be criminally responsible for the offense and would be subject to prosecution. It would be a defense to prosecution under the bill that the person to whom the e-cigarette was sold or given presented to the defendant apparently valid proof of identification. It also would be an affirmative defense to prosecution if the defendant was the owner of a store in which e-cigarettes were sold at retail, the offense occurred in connection with a sale by an employee of the owner, and the owner had provided the employee with a working transaction scan device and adequate training in the use of the scan device.

The bill would make it an offense punishable by a fine of up to $250 for an individual younger than 18 years old to:

- possess, purchase, consume, or accept an e-cigarette; or
- falsely represent himself or herself to be 18 years old by displaying false proof of age to obtain possession of, purchase, or receive an e-cigarette.

An individual convicted of this offense would be required to attend an e-cigarette and tobacco awareness program approved by the commissioner. The bill would make an exception to the offense for an individual younger than 18 years old who possessed an e-cigarette in certain circumstances.

E-cigarettes on school property. The bill would apply to e-cigarette provisions in statute that prohibit the use of tobacco products on school property.

Signage. The bill also would apply signage requirements in Health and Safety Code, ch. 161 to the retail or vending machine sale of cigarettes or tobacco products to e-cigarettes. The comptroller would provide the sign without charge to any person who sold e-cigarettes and to distributors.

Notification of employees. The bill would require retailers of e-cigarettes, as with retailers of cigarettes or tobacco products, to notify their employees of signage requirements within 72 hours of the date they began retail sales. Retailers would also have to notify employees within 72 hours that state law prohibited the sale of e-cigarettes to persons under 18 years old and that a violation of this law would be a class C misdemeanor

(maximum fine of $500). Employees would have to sign a form stating that the law had been fully explained, that they fully understood the law, and that they agreed to comply with the law as a condition of employment.

Direct access to e-cigarettes. A retailer or other person could not permit a customer direct access to e-cigarettes or install or maintain a vending machine for e-cigarettes. Also, a retailer could not redeem or distribute to persons younger than 18 years old a coupon, a free sample, or a discounted e-cigarette.

Block grants and inspections. The comptroller could make block grants to counties and municipalities to be used by local law enforcement agencies to enforce the bill's provisions in a manner that could reasonably be expected to reduce the extent to which e-cigarettes were sold or distributed, including by delivery sale, to persons who were younger than 18 years old. The bill would require random, unannounced inspections to be conducted at various locations where e-cigarettes were sold or distributed, including by delivery sale, to ensure compliance with the provisions of the bill.

Tobacco awareness campaign. The bill would require the tobacco awareness campaign under Health and Safety Code, sec. 161.301(a) to include e-cigarettes in its activities.

Delivery sales. Regulations in Health and Safety Code, ch. 161 that apply to the delivery and shipping of cigarettes also would apply to e-cigarettes. The bill would add new regulations for delivery sale orders of e-cigarettes and would specify that a person taking a delivery sale order of e-cigarettes would have to comply with age verification and other requirements under state law. A person could not mail or ship e-cigarettes in connection with a delivery sale order unless the person verified that the prospective purchaser was at least 18 years old through a commercially available database. The bill would specify additional acceptable means for a retailer to verify the age of the prospective purchaser. The bill also would require such a delivery to require an adult signature.

A delivery sale of an e-cigarette would have to include a prominent and

clearly legible statement that e-cigarette sales to individuals younger than 18 were illegal under state law and are restricted to those who provide verifiable proof of age. The bill would require a delivery sale order of e-cigarettes to include an additional clear, conspicuous statement provided in the bill.

A person who had made a delivery sale or shipped or delivered e-cigarettes would be exempt from the requirement to file a memorandum or copy of an invoice with the comptroller if the person had not violated Health and Safety Code, ch. 161, subch. H for two years preceding the date of the report and if they had not been reported by the comptroller as having violated subch. H. The bill would require a person who had not yet submitted such a memorandum of invoice copy to submit this record to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years. A person would have to maintain records of compliance for four years from the date the record was prepared.

Report. The bill would require the Department of State Health Services to report to the governor, lieutenant governor, and speaker of the House by January 5 of each odd-numbered year on the status of the use of e-cigarettes in the state. The report would include components specified in the bill.

Regulating the sale of liquid containing nicotine. The bill would prohibit a person from selling or causing to be sold a container that contained liquid with nicotine and that was an accessory for an e-cigarette unless:

- the container satisfied federal child-resistant effectiveness standards; or
- the container was a prefilled cartridge sealed by the manufacturer and was not intended to be opened by a consumer.

The bill would apply to an offense committed on or after October 1, 2015. The comptroller would develop the sign for a retailer or distributor to display per the bill and make the sign available to the public by September 15, 2015. The bill would take effect October 1, 2015.

SUPPORTERS SAY:

CSHB 170 would provide necessary regulation for e-cigarettes and would ensure controls were in place to prevent minors from accessing or purchasing e-cigarettes either at brick and mortar stores or online. Many minors and older individuals who have never smoked traditional cigarettes have used e-cigarettes, which still can contain dangerous chemicals, including known carcinogens. CSHB 170 would prevent the lack of regulation in the e-cigarette industry from possibly jeopardizing the progress the state has made in reducing smoking rates.

The long-term effects of these products are unknown, yet many of these products contain nicotine, which can be highly addictive. E-cigarette liquid that may not contain nicotine still may include ingredients such as propylene glycol, which is safe to ingest but has not been proven to be safe to inhale. Moreover, e-cigarette liquid, including liquid that has nicotine, comes in flavors that are attractive to children and could introduce children to the idea of smoking, acting as a gateway to traditional cigarettes or other drugs. The bill would address the potential for minors to load e-cigarette cartridges with other drugs by prohibiting the sale of all e-cigarettes to minors.

OPPONENTS SAY:

CSHB 170 would lump e-cigarette vapor products that do not contain tobacco with tobacco products, though these products do not have the same potential for harm as tobacco products. For instance, these products do not contain tar, carbon monoxide, or particulates. Vapor products are not necessarily a gateway to tobacco smoking; rather, people tend to switch from smoking to vaping, not from vaping to smoking.

SUBJECT: Certain title insurance policy liability and reinsurance requirements

COMMITTEE: Insurance — committee substitute recommended

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — Margaret Redman, First American/American Land Title Association (*Registered, but did not testify*: Heidi Junge, Stewart Title Guaranty Co., Texas Land Title Association; Randy Lee, Stewart Title Guaranty Co.; Allen Place, Texas Land Title Association; Randy Cain, The Wind Coalition)

Against — None

On — (*Registered, but did not testify*: Marianne Baker and Kevin Brady, Texas Department of Insurance)

BACKGROUND: Insurance Code, sec. 2551.301 prohibits a title insurance company from issuing a title insurance policy on any real property located in Texas involving a potential policy liability of more than 50 percent of the company's capital stock and surplus as stated in the most recent annual statement of the company. A title insurance company can exceed this limit if the excess liability is reinsured in due course in an authorized title insurance company.

Under sec. 255.305 a title insurance company can acquire reinsurance on an individual policy or facultative basis from a title insurance company not authorized to engage in the business of title insurance in Texas if the title insurance company from which the reinsurance is acquired meets certain criteria. These criteria include that the title insurance company acquiring reinsurance gives written notice to the department at least 30 days before acquiring the reinsurance and the insurance commissioner does not prohibit the title insurance company from obtaining reinsurance on the ground that the transaction may result in a hazardous financial

condition.

Under Insurance Code, sec. 2551.305(e) a title insurance company may obtain reinsurance from an assuming insurer with a financial strength rating of B+ or better from the A.M. Best Company that meets the requirements of Insurance Code, ch. 493 related to credit for reinsurance, if the insurance company has provided the Texas Department of Insurance with an affidavit that:

- contains facts that demonstrate the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title company; and
- states the terms of the reinsurance treaty or other reinsurance agreement that the title insurance company will obtain.

The term "real property" usually refers to any property that is attached directly to land, as well as the land itself.

The state's commercial real estate market is growing, and some have called for the removal of certain barriers to efficiency in the provision of title insurance and reinsurance to allow this growth to continue.

DIGEST:

CSHB 1357 would allow a title insurance company to issue a title insurance policy on any real property located in Texas involving a maximum potential policy liability of 50 percent of the sum of the title insurance company's surplus as regards policyholders and the company's statutory premium reserves as stated in the company's most recent annual statement. A title insurance company could exceed the 50 percent limit for potential policy liability if the excess liability was reinsured in due course in accordance with the bill's provisions.

Under the bill, a title insurance company could reinsure any of its policies and contracts issued on real property in Texas or those policies and contracts issued under Insurance Code, ch. 2751, related to title insurance for personal property interests, if the reinsuring title company was authorized to engage in business in Texas or if the title insurance company:

- had a combined capital and surplus of at least $20 million as stated in the company's most recent annual statement preceding the acceptance of reinsurance; and
- was domiciled in another state and authorized to engage in the business of title insurance in one or more states.

The bill would remove other requirements for when a title insurance company could acquire reinsurance on an individual policy or facultative basis from a title insurance company that was not authorized to engage in the business of title insurance in Texas, including certain requirements regarding notice, applications, and hearings.

Under the bill, a title insurance company could obtain reinsurance from an assuming insurer with a financial strength rating of B+ or better from the A.M. Best Company for reinsurance that met the requirements of Insurance Code, ch. 493 related to credit for reinsurance if the title insurance company had provided TDI with notice, rather than an affidavit. The notice would have to:

- contain representations that the title insurance company was unable after diligent effort to procure sufficient reinsurance from another title insurance company; and
- summarize the terms of the reinsurance treaty or other reinsurance agreement that the title insurance company would obtain.

The bill would take effect September 1, 2015, and would apply only to a title insurance policy or reinsurance contract entered into by a title insurance company on or after that date.

SUBJECT: Removing certain parents from DFPS registry for abuse and neglect

COMMITTEE: Human Services — committee substitute recommended

VOTE: 8 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Spitzer

0 nays

1 absent — Price

WITNESSES: For — Katherine Barillas, One Voice Texas; Deborah Rosales Elkinsl; (*Registered, but did not testify*: Albert Metz, ADAPT; Katharine Ligon, Center for Public Policy Priorities; Dennis Borel, Coalition of Texans with Disabilities; Robin Peyson, Communities for Recovery; Sarah Watkins and Joe Tate, Community Now!; Kathryn Lewis and Susan Murphree, Disability Rights Texas; Tanya Lavelle, Easter Seals Central Texas; Cate Graziani, Mental Health America of Texas; Laura Austin and Greg Hansch, National Alliance on Mental Illness (NAMI) Texas; Will Francis, National Association of Social Workers - Texas Chapter; Judy Powell, Parent Guidance Center; Clayton Travis, Texas Pediatric Society; Melody Chatelle, United Ways of Texas; Shaun Bickley; Marilyn Hartman; Linda Litzinger)

Against — None

On — John Specia, Department of Family and Protective Services; Colleen Horton, Hogg Foundation for Mental Health; (*Registered, but did not testify*: Denise Brady and Elizabeth "Liz" Kromrei, Department of Family and Protective Services)

BACKGROUND: Family Code, sec. 261.002 established a central registry of reported cases of child abuse or neglect under the Department of Family and Protective Services (DFPS).

Sec. 261.001 defines “severe emotional disturbance” as a mental, behavioral, or emotional disorder of sufficient duration to result in

functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities.

Intensive mental health services and treatment for children with serious emotional disturbance or significant behavior challenges sometimes are not accessible to the children and families who need them. In some cases parents place their child in the custody of Child Protective Services (CPS) to obtain the mental health services the child needs. Currently, when parents relinquish custody of their child to CPS, they are added to the abuse and neglect registry.

DIGEST:

CSHB 2039 would allow the executive commissioner of the Health and Human Services Commission to adopt rules for the central registry of reported cases of child abuse or neglect that would:

- prohibit the Department of Family and Protective Services (DFPS) from making a finding of abuse or neglect against a person in a case where DFPS was named managing conservator of a child with a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child; and
- establish guidelines for reviewing the records in the registry and removing those records in a case where DFPS was named managing conservator of a child with a severe emotional disturbance only because the child's family was unable to obtain mental health services for the child.

The bill would remove the requirement that the rules provide for cooperation with local child service agencies and with other states in exchanging reports to effect a national registration system.

CSHB 2039 also would require that before DFPS filed a suit requesting managing conservatorship of a child who suffered from a severe emotional disturbance to obtain mental health services for the child, DFPS would have to, unless it was not in the best interest of the child, discuss with the child’s parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS.

CSHB 2039 also would require, on or before November 1 of each even-

numbered year until September 1, 2019, that DFPS report the following information to the Legislature, with respect to the children described in above:

- the number of children for whom DFPS had been appointed managing conservator;
- the number of children for whom DFPS had been appointed joint managing conservator; and
- the number of children who were diverted to community or residential mental health services through another agency.

DFPS also would have to report the number of persons whose names were entered into the central registry of cases of child abuse and neglect only because DFPS was named managing conservator of a child who had severe emotional disturbance because the child's family was unable to obtain mental health services for the child.

This bill would take effect September 1, 2015.

SUBJECT: Appealing the desired future conditions of groundwater resources

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 11 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

WITNESSES: For — Ed McCarthy, Electro Purification; Alan Cockerell, Schertz/Seguin Local Government Corporation; Stephen Minick, Texas Association of Business; (*Registered, but did not testify*: Julie Williams, Chevron; Albert Cortez, Coastal Water Regional Supply Company; Stan Casey, COG Operating LLC; Scott Gilmore, Hays Caldwell Public Utility Agency; David Holt, Permian Basin Petroleum Association; Wendy Foster, SJWTX and Texas Water Alliance; Mike Nasi, South Texas Electric Cooperative, Water-Energy Nexus for Texas Coalition; Bill Stevens, Texas Alliance of Energy Producers; CJ Tredway, Texas Oil and Gas Association; Buster Brown)

Against — Dirk Aaron, Clearwater Underground Water Conservation District; Janet Guthrie, Hemphill Underground Water Conservation District; Paul Weatherby, Middle Pecos Groundwater Conservation District; Ty Embrey, Panola County Groundwater Conservation District, Middle Trinity Groundwater Conservation District; (*Registered, but did not testify*: Lowell Raun, Coastal Bend Groundwater Conservation Districts, Texas Rice Producers Legislative Group; Dee Vaughan, Corn Producers Association of Texas; Drew Miller, Hemphill County Underground Water Conservation District; Harvey Everheart, Mesa Underground Water Conservation District; Tom Forbes, North Plains Groundwater Conservation District; Robert Howard, South Texans' Property Rights Association; Jason Skaggs, Texas and Southwestern Cattle Raisers Association; Billy Howe, Texas Farm Bureau; Joey Park, Texas Wildlife Association; Teresa Beckmeyer)

On — Russell Johnson, End Op L.P.; Michele Gangnes, League of Independent Voters of Texas; C.E. Williams, Panhandle Groundwater

Conservation District; Stacey Steinbach, Texas Alliance of Groundwater Districts; Patricia Hayes, Texas Association of Groundwater Owners and Producers; Doug Shaw, Upper Trinity Groundwater Conservation District; (*Registered, but did not testify*: Joe Reynolds, Robert Mace, and Les Trobman, Texas Water Development Board)

BACKGROUND:

Groundwater conservation districts in groundwater management areas meet every five years to establish the desired future conditions of the aquifers they regulate. Desired future conditions are a description of what the aquifer level should be in 50 years.

Under Texas Water Code, sec. 36.1083 a person with a legally defined interest may file a petition with the Texas Water Development Board (TWDB) appealing the approval of the desired future conditions of the groundwater resources. TWDB is required to review the petition, hold at least one hearing, and follow other procedures outlined in statute, which could lead to the issuance of revised conditions.

DIGEST:

CSHB 200 would remove TWDB's petition process for desired future conditions and instead allow an affected person to file a petition with a groundwater conservation district requiring that the district contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing appealing the reasonableness of a desired future condition. The bill would place the final decision on adopting the desired future condition with the district and would provide a process for district court appeal and for a suit against a district after all administrative appeals to the district were final.

Administrative appeal of desired future conditions. The bill would remove TWDB's reasonableness petition process for desired future conditions and instead allow an affected person to petition a district to contract with SOAH to hear the challenge.

An affected person would have to file a hearing petition with the groundwater conservation district within 120 days of the district's adoption of the desired future condition.

Within 10 days of receiving the petition, the district would have to submit a copy to TWDB so it could conduct an administrative review of the

desired future condition and a scientific and technical analysis. TWDB would have 120 days to deliver the scientific and technical analysis to SOAH. Within 60 days of receiving a petition, a district would be required to contract with SOAH to conduct the contested case hearing and submit any related petitions.

Dispute resolution. The district could seek the assistance of the Center for Public Policy Dispute Resolution, TWDB, or other dispute resolution systems to mediate the issued raised in the petition. If the issue could not be resolved, SOAH would proceed with the hearing.

Hearing location and notice. A hearing would have to be held in accordance with SOAH rules at the district office or regular meeting location of the district board. The district would have to provide general notice of the hearing as well as individual notice of the hearing to the petitioner, any other party to the hearing, each nonparty district and regional planning group within the same management area, TWDB, and the Texas Commission on Environmental Quality.

Prehearing conference. SOAH would have to hold a prehearing conference to determine preliminary matters, including:

- whether the petition should be dismissed for failure to state a claim on which relief could be granted;
- whether a person seeking to participate was an affected person; and
- naming parties to the hearing.

Hearing costs. The petitioner would be required to pay the costs associated with the contract for the hearing. The petitioner would have to deposit with the district an amount sufficient to pay the contract. After the hearing, SOAH could assess costs to other parties of the hearing and refund any excess to the petitioner.

Final order. On receipt of the administrative law judge's findings of fact and conclusions of law in a proposal for decision, including a dismissal of a petition, the district would have to issue a final order stating the district's decision on the contested matter and the district's findings of fact and conclusions of law.

The district could change a finding of fact or conclusion of law made by the administrative law judge or could vacate or modify an order issued by the administrative law judge if the district determined that the administrative law judge did not properly apply or interpret applicable law, if a prior administrative decision on which the administrative law judge relied was incorrect or should be changed, or if a technical error in a finding of fact should be changed.

If the district vacated or modified the administrative law judge's proposal for decision, the district would have to report, in detail, the reasons for disagreement, including the policy, scientific, and technical justifications for the district's decision.

Finding of unreasonable desired future condition. If the district found that a desired future condition was unreasonable, the other districts in the management area would have to reconvene within 30 days in a joint planning meeting to revise the desired future condition. A district's final order finding that a desired future condition was unreasonable would not invalidate the desired future condition for a district that did not participate as a party in the hearing.

Court appeal of desired future conditions to a district court. A final district order could be appealed under the substantial evidence standard of review. The venue for appeal would be a district court with jurisdiction over any part of the territory of the district that issued the order.

Finding of unreasonable desired future condition. If the court found that a desired future condition was unreasonable, the court would be required to strike the desired future condition and order the districts in the same management area that did not participate as a party to the hearing to reconvene in a joint planning meeting within 30 days of the court's decision to revise the desired future condition.

Suit against a district. After all administrative appeals to the district were final, an affected party who was dissatisfied with the desired future condition would be entitled to file suit against the district or its directors to challenge the reasonableness of the desired future condition. The suit

would have to be filed in a court of competent jurisdiction in any county in which the district was located.

The bill would take effect September 1, 2015, and would apply only to a desired future condition adopted on or after that date.

SUPPORTERS SAY:

CSHB 200 would protect private property rights and maintain local control by creating a meaningful appeals process to allow a property owner to challenge the establishment of a desired future condition of an aquifer that could result in unreasonable restrictions on the owner's right to produce groundwater.

The current process for questioning the reasonableness of a desired future condition at the Texas Water Development Board (TWDB) does not provide a meaningful final resolution because it lacks the necessary administrative processes to ensure a clear, fair resolution. For this reason, the State Office of Administrative Hearings (SOAH) would be a better venue for these hearings.

Setting the desired future conditions is the first step in groundwater management. Therefore, it is important that landowners and other groundwater users are able to dispute the desired future condition. The bill would offer due process and a system of checks and balances and would place the proper emphasis on the role of science while allowing groundwater conservation districts to achieve their primary purpose of properly managing the groundwater resources.

While the bill would remove TWDB's petition process for desired future conditions, it would maintain the important role of TWDB through an administrative review of the desired future condition as well as a scientific and technical analysis. TWDB's administrative and technical review would provide a record for an entity to challenge the adoption of the desired future condition in district court.

Concerns that the bill would result in lawsuits being decided by people without knowledge of the water issues involved are unfounded because SOAH's specialized teams and administrative law judges have the expertise to handle these kinds of contested case hearings.

OPPONENTS SAY:

Replacing the process for challenging the reasonableness of a desired future condition at TWDB with an appeals process involving a contested case hearing at SOAH could lead to more lawsuits that would be decided by people without knowledge of the water issues involved. TWDB is better informed and better able to make decisions regarding desired future conditions than SOAH.

SUBJECT: Studying the regulations of certain solid waste landfills overlying aquifers

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 8 ayes — Morrison, E. Rodriguez, Kacal, K. King, P. King, Lozano, Reynolds, E. Thompson

1 nay — Isaac

WITNESSES: For — Stephen Minick, Texas Association of Business

Against — Brenda Haney, Lone Star Chapter of the Solid Waste Association of North America (TxSWANA)

On — Andrew Dobbs, Texas Campaign for the Environment; (*Registered, but did not testify*: Earl Lott, Texas Commission on Environmental Quality)

BACKGROUND: Municipal solid waste landfills receive household waste and non-hazardous sludge, industrial solid waste, and construction and demolition debris. All municipal solid waste landfills must comply with the federal Resource Conservation and Recovery Act, Subtitle D, or equivalent state regulations.

Included in the federal regulations adopted by Texas are:

- location restrictions to ensure that landfills are built in suitable geological areas;
- requirements for composite landfill liners to protect groundwater and underlying soil from releases of leachate, a liquid produced as waste decomposes;
- requirements for a leachate collection and removal systems to remove leachate from the landfill for treatment and disposal; and
- requirements for groundwater monitoring.

DIGEST: CSHB 2532 would require the Texas Commission on Environmental Quality (TCEQ) to conduct a peer reviewed study determining the

effectiveness of the regulations governing the design and construction of Type I municipal solid waste landfills located over Texas aquifers that were built on or after October 9, 1993.

The study would have to:

- determine if landfills located over aquifers were leaking;
- determine if any leakage had seeped into or contaminated the groundwater underlying the landfills; and
- include recommendations for improving the effectiveness of the regulations governing the design and construction of landfills located over aquifers, including recommendations to prevent or reduce leakage and to protect aquifers.

TCEQ could work with other state agencies, institutions of higher education, nonprofit organizations, private organizations, or business entities to conduct the study.

By January 1, 2017, TCEQ would be required to submit a report on the results and recommendations of the study to the governor, the lieutenant governor, the speaker of the House of Representatives, and the chairman of each legislative committee with jurisdiction over environmental matters.

Applications and permits for Type I municipal solid waste landfills could not be postponed or delayed pending the results of the study.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2532 would require TCEQ to study 15 landfills built on top of aquifers since 1993 to determine the effectiveness of regulations governing their design and construction in protecting the underlying groundwater against the possibility of leaks.

In 1993, Texas adopted standards from the federal Resource Conservation and Recovery Act, Subtitle D, requiring municipal solid waste landfills to

include composite liners for leak prevention and monitoring systems for leak detection. Other standards adopted were related to drainage systems to protect against the accumulation of leachate, a liquid produced as waste decomposes that can pose a significant threat to the surrounding water if it is not properly collected and removed.

Twenty-two years have passed since the landfill standards were adopted, and Texas has never evaluated the effectiveness of these regulations to ensure that its aquifers and groundwater are adequately protected against leachate. While groundwater monitoring data have been collected for more than 20 years, this information has not been adequately reviewed. The study and report required by HB 2532 would serve this important purpose.

OPPONENTS SAY:

HB 2532 is unnecessary because each landfill that has been constructed or updated since Texas adopted the federal standards in 1993 already has been studied extensively. Existing regulation of landfills is rigorous and includes protections for groundwater, such as landfill liners and ongoing monitoring. More than 20 years of groundwater monitoring data already demonstrate the effectiveness of the design and construction of municipal solid waste landfills in protecting groundwater against the possibility of leaks.

OTHER OPPONENTS SAY:

Empowering TCEQ to conduct the study would not be appropriate because the commission regulates municipal landfills. Although the study would be peer reviewed, the interests of the state would be better served by having an independent source such as a research university conduct the study.

SUBJECT: Allowing certain persons to serve on property owners' association boards

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 6 ayes — Oliveira, Simmons, Collier, Rinaldi, Romero, Villalba

1 nay — Fletcher

WITNESSES: For — (*Registered, but did not testify*: Steven Garza, Texas Association of Realtors; Julián Muñoz Villarreal, Texas Neighborhoods Together; David M. Smith, Texas Neighborhoods Together; Gwen Gates; David Kahne)

Against — None

On — (*Registered, but did not testify*: Connie Heyer, Texas Community Association Advocates)

BACKGROUND: Under Property Code, ch. 209, known as the Texas Residential Property Owners Protection Act, "board" means the governing body of a property owners' association. In 2011, the 82nd Legislature enacted SB 472 by West, which made a person who had been verifiably convicted of a felony or crime involving moral turpitude ineligible to serve on a board.

DIGEST: HB 1072 would allow a person who had been convicted of a felony or crime involving moral turpitude to serve as a board member of a property owners' association if the conviction occurred more than 20 years before the board received evidence of it.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: HB 1072 would allow property owners who had been convicted of a felony or crime involving moral turpitude to participate in governing their neighborhoods if the conviction was more than 20 years old. A permanent bar against property owners who were convicted of a felony or crime involving moral turpitude is excessive — 20 years is plenty of time for people to learn from their mistakes.

People who were convicted of a felonies or crimes involving moral

turpitude more than 20 years earlier and who were interested in serving on a property owners' association board should have the opportunity to run for a position and let their neighbors be the judge of their character and trustworthiness. Such an individual would be one of several members serving on the board, so he or she would not have an undue amount of influence over other people's homes.

OPPONENTS SAY:

HB 1072 would allow convicted felons to serve on property owners' association boards, giving them a certain degree of control over other people's homes. Once a person is convicted of a felony, that person has certain privileges that will not be returned because of that person's convictions. Serving on the board of a property owners' association should remain one of those privileges.

SUBJECT: Eliminating tuition set-asides for certain student loan repayment programs

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 8 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Clardy

WITNESSES: For — None

Against — None

On — Henry De La Garza, Office of the Attorney General; (*Registered, but did not testify*: Lesa Moller, Texas Higher Education Coordinating Board)

BACKGROUND: The Education Code authorizes tuition set-asides at medical schools (sec. 61.539) and public law schools (sec. 61.9731) to help fund, respectively, the physician education loan repayment program and a loan repayment program for attorneys at the Office of the Attorney General.

While both programs may be funded through means including tuition set-asides, gifts, and grants, the physician education loan repayment program also may be funded through legislative appropriations.

DIGEST: HB 2396 would eliminate tuition set-asides for both the physician education loan repayment program and the loan repayment program for attorneys at the Office of the Attorney General.

These changes would take effect for any tuition charged for the fall 2015 semester. Any tuition charged before that date would be subject to the tuition set-asides for the two programs.

The bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 2396 would increase transparency by helping keep tuition money at the institutions where students gain their education instead of redistributing it to graduates from other schools.

The bill would eliminate the collection of tuition set-asides for the physician education loan repayment program because the revenue collected is in excess of awards made, and the account has accumulated a large balance. The bill would not greatly impact this fund, which receives the bulk of its funding from other sources, such as a portion of a tobacco products tax.

The funding process to use set-asides for the Office of the Attorney General (OAG) lawyers loan repayment program lacks transparency and should be eliminated. While the Office of the Attorney General relies on this program to recruit and retain attorneys, other measures such as salary increases or other incentives could be more effective.

OPPONENTS SAY:

HB 2396 would limit the funding options for two programs that have served the state well. The Legislature should be looking for ways to expand the physician education loan repayment program rather than to eliminate a source of its funding. The state has an ongoing need to attract medical school students to serve in parts of the state experiencing a shortage of medical care providers, and the program helps address those needs.

Because the OAG lawyers loan repayment program cannot be funded with legislative appropriations, eliminating tuition set-asides essentially would dismantle the program. The Office of the Attorney General uses this program to recruit and retain skilled attorneys who otherwise could make large salaries at law firms. Eliminating set-asides could make it difficult to compete for top talent.

While the House budget proposal does not contain funds for the OAG loan repayment program, the Senate version would authorize an appropriation of about $372,000 for loan repayment assistance during

fiscal 2016-17.

OTHER OPPONENTS SAY:

The Legislature should either make an allocation authorizing the coordinating board to make full use of the tuition set-asides that are collected for the OAG loan repayment program, or the Legislature should eliminate the tuition set-asides but allow the program to be funded through legislative appropriations.

NOTES:

According to the Legislative Budget Board, the bill would have a negative fiscal impact of $881,000 in general revenue in fiscal 2016-17.

SUBJECT: Restricting access to motor vehicle accident reports

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

WITNESSES: For — Ruben Herrera; Bart Huffman; (*Registered, but did not testify*: Paul Martin, National Association of Mutual Insurance Companies; Mike Hull, Texans for Lawsuit Reform; Carol Sims, Texas Civil Justice League; Bryan Blevins, Texas Trial Lawyers Association)

Against — Tony Plohetski, Austin American-Statesman/Texas Press Association; Kelly Brown, The Bryan-College Station Eagle, Texas Press Association, Freedom of Information Foundation of Texas and Texas APME; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; Michael Schneider, Texas Association of Broadcasters; Donnis Baggett, Texas Press Association)

On — Randy Kildow, Texas Association of Licensed Investigators

BACKGROUND: Under Transportation Code, sec. 550.065 governmental entities must release accident report information to any person that can provide two or more of the following:

- the date of the accident;
- the specific address or the highway or street where the accident occurred; or
- the name of any person involved in the accident.

Under Penal Code, sec. 38.12, a person commits barratry if that person solicits employment by communicating in person, by written communication, or by telephone with a prospective client concerning professional employment for the purpose of providing professional services without the prospective client's request.

DIGEST:

CSHB 2633 would prohibit governmental entities from releasing motor vehicle accident reports to persons who had no connection to the accident. Under the bill, the information could be released only to governmental agencies, courts, or persons directly concerned in the accident including:

- persons involved in the accident and their authorized representatives;
- drivers involved in the accident;
- employers, parents, or legal guardian of drivers involved in the accident;
- owners of vehicles or property damaged in the accident;
- persons with financial responsibility for the vehicle, including policyholders of liability insurance policies;
- insurance companies that issue motor vehicle liability insurance policies covering a vehicle involved in the accident; or
- any person who may sue because of death resulting from the accident.

The bill also would require governmental entities to create redacted accident reports that could be provided to any person upon request and payment of the required fee. These redacted accident reports could include only the location, date, and time of the accident as well as the make and model of any vehicle involved in the accident.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2633 is necessary to protect privileged and confidential information, including personally identifiable information, from bad actors who seek to use this information for their own benefit.

Accident reports often contain confidential information, such as names and driver's license numbers, that could be used in identity theft. By requiring the creation of redacted accident reports that would be available to the public, this bill would balance protection of confidential

information with public access to information.

News organizations still would be able to access information on traffic accidents in a way that did not jeopardize the privacy of the individuals involved. The Department of Transportation regularly aggregates accident information and makes changes and repairs to improve the safety of roads across the state based on its own studies.

The bill also would ensure that people who were involved in accidents were not subjected to barratry or identity theft. Under current law, lawyers and non-lawyers can obtain information about accidents and contact those involved in the accidents directly and encourage them to file a lawsuit. This direct contact constitutes solicitation and barratry. Although the Penal Code and the Texas Disciplinary Rules of Professional Conduct provide punishments for barratry, the offense is rarely prosecuted and is often difficult to detect. Barratry remains a systemic issue across the state. This bill would eliminate a source of confidential information that actors could use to commit barratry.

OPPONENTS SAY:

CSHB 2633 would unnecessarily restrict public access to important safety information.

News outlets often research these reports to study traffic and accident trends and provide the public with valuable safety information. It is important to humanize the situations by putting a face on the story. A recent study conducted by a newspaper found that a large number of fatal accidents were occurring on a highway in Texas. The newspapers pulled the accident reports for those cases and found that many of the accident victims were college students driving between college and their families' home. The state later expand the highway to make it safer, which may have been prompted by the story made possible through access to the type of information this bill would make more difficult to acquire.

Accident reports are often important for investigators and attorneys who are investigating their client's accidents. Although investigators and attorneys may be able to access their clients' accident reports, they would not be able to access other reports that occurred on the same road on the same day. This would limit their ability to investigate road conditions on

the date of the incident or find potential witnesses to the accidents.

Barratry is already punishable under both the Penal Code and the Texas Disciplinary Rules of Professional Conduct. Those punishments are sufficient to deter this type of behavior.

SUBJECT: Establishing procedures to use telephone, email to request search warrant

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Moody, Hunter, Leach, Shaheen, Simpson

1 nay — Canales

WITNESSES: For — (*Registered, but did not testify*: Melinda Smith, Combined Law Enforcement Associations of Texas; Steve Dye, Grand Prairie Police Department; Justin Wood, Harris County District Attorney's Office; Bill Lewis, Mothers Against Drunk Driving; Deanna L. Kuykendall, Texas Municipal Courts Association; Lon Craft and Heath Wester, Texas Municipal Police Association; Julie Wheeler, Travis County Commissioners Court)

Against — None

On — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Code of Criminal Procedure, sec. 18.01(b) governs the issuance of search warrants. The section prohibits the issuance of a search warrant unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause exists for the issuance.

DIGEST: CSHB 326 would allow magistrates to consider information communicated by telephone or other reliable electronic means when determining whether to issue a search warrant. The bill would establish procedures for accepting information and issuing search warrants under these circumstances.

Magistrates could examine, under oath, applicants for search warrants and persons on whose testimony the application was based. If an applicant for a warrant attested to information in an affidavit submitted by reliable electronic means, magistrates would have to acknowledge so in writing on

the affidavit.

If a magistrate considered additional testimony or exhibits, the magistrate would have to ensure that the testimony was recorded, notes were transcribed, written records were certified as accurate, and exhibits were preserved.

Applicants submitting information by telephone would have to prepare a proposed duplicate original of the warrant and transmit its contents to the magistrate. A transmission by reliable electronic means would serve as the original search warrant. The bill also would establish procedures for modifying warrants submitted in such a manner.

Magistrates issuing warrants by the means allowed in the bill would have to sign the original search warrant, record the date and time of issuance, and transmit the warrant to the applicant or direct the applicant to sign for the judge.

Evidence acquired through search warrants obtained under the bill would not be subject to suppression on the grounds that issuing the warrant was unreasonable under the circumstance unless there was a finding of bad faith.

The bill would take effect, September 1, 2015, and would apply only to search warrants issued on or after that date.

SUPPORTERS SAY:

CSHB 326 would help modernize the process for requesting search warrants. Currently, peace officers generally must physically hand a judge a request for a search warrant. Sometimes this can be difficult, especially late at night or in large counties where officers could be 50 or more miles from a judge.

The bill would address this problem by bringing the warrant request process up to date to allow the use of commonly used technology to present requests for warrants. Under the bill, peace officers and prosecutors could use the telephone or other electronic means, such as email, to submit requests. This would be in line with federal rules that allow phone and email requests for warrants and would echo a discussion

in a Court of Criminal Appeals decision about requesting warrants.

The bill would establish procedures and safeguards to protect the integrity of the warrant process. The process would be carefully recorded, documented, and preserved. The bill would track the provisions of the federal rule governing requests for warrants to ensure that well-known standards were in place to govern the procedure.

OPPONENTS SAY:

While CSHB 326 would track many provisions in federal rules relating to requesting search warrants by phone or electronic means, it would deviate in some ways from federal rules that could cause confusion. For example, the bill would require judges to ensure that certain exhibits were *preserved*, while the federal rule requires that exhibits be *filed*. It is unclear what preserving exhibits would mean and how such exhibits would be accessed. This could lead to varying treatment of exhibits by different judges or peace officers. It would be best to more closely track the federal rule because it has been tested and is well understood.

SUBJECT: Amending disclosure procedures for expert witness information

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Sarah Pahl, Texas Criminal Justice Coalition)

Against — None

On — Amanda Marzullo, Texas Defender Service

BACKGROUND: The Michael Morton Act, enacted in 2013 by the 83rd Legislature through SB 1611 by Ellis, changed discovery procedures in criminal cases. The act removed provisions requiring a defendant to file a motion for disclosure of evidence with the court, and instead required that evidence be produced merely upon the defendant's request.

The process for disclosure of information related to expert witnesses was not changed by SB 1611 and still requires a defendant to file a motion for disclosure. Under Code of Criminal Procedure, Art. 39. 14(b), on a motion of a party and notice to other parties, the court in which an action is pending may order one or more of the other parties to disclose to the party making the motion the name and address of each expert witness the other party may use at trial.

DIGEST: CSHB 510 would amend the Code of Criminal Procedure to require a party that received a request for discovery to disclose to the requesting party the name and address of each expert witness the disclosing party could use at trial. The requirement under CSHB 510 would apply to requests made within 30 days before jury selection in a trial was scheduled to begin or, in a trial without a jury, within 30 days before the presentation of evidence was scheduled to begin.

The bill would change the way in which disclosure had to occur from a manner of disclosure specified by the court to a disclosure made in writing in either hard copy or electronic form.

The bill also would change the date by which the disclosure had to be made from no later than 20 days before trial to no later than 20 days before jury selection was scheduled to begin, or, in a trial without a jury, no later than 20 days before the presentation of evidence. The bill would allow the court, on motion of a party and on notice to the other parties, to order an earlier time by which one or more other parties had to make the disclosure.

The bill would take effect September 1, 2015, and would apply to the prosecution of an offense committed on or after that date.

SUBJECT: Operation and functions of the Texas Grain Producer Indemnity Board

COMMITTEE: Agriculture and Livestock — committee substitute recommended

VOTE: 5 ayes — T. King, C. Anderson, Cyrier, González, Springer

2 nays — Rinaldi, Simpson

WITNESSES: For — John Zacek, Prosperity Bank, Texas Bankers Association; Daniel Berglund, Texas Grain Producers Indemnity Board; Ben Scholz, Texas Wheat Producers Association; (*Registered, but did not testify*: Mitchell Harris, AgTexas Farm Credit, Southwest Council of Agribusiness, Texas Grain Producer Indemnity Board; David Gibson, Corn Producers Association of Texas; Dee Vaughan, Southwest Council of Agribusiness, Corn Producers Association of Texas, Plains Cotton Growers, Inc., Texas Grain Producers Indemnity Board; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; John Heasley, Texas Bankers Association; Dale Murden, Texas Citrus Mutual; Marissa Patton, Texas Farm Bureau; Steelee Fischbacher, Texas Wheat Producers Association)

Against — (*Registered, but did not testify*: Joe Morris, Texas Poultry Federation)

On — (*Registered, but did not testify*: Jessica Escobar, Texas Department of Agriculture)

BACKGROUND: HB 1840 by Phillips, enacted by the 82nd Legislature in 2011, allows for the creation of the Texas Grain Producer Indemnity Board. In 2012, a referendum to establish the board failed to gain a two-thirds majority vote of grain producers in the state. If the referendum had passed, the board would have collected an assessment from grain producers to establish a statewide grain indemnity fund.

DIGEST: CSHB 2504 would allow for a referendum to establish the board by majority approval, instead of by a two-thirds margin as in current statute.

The bill would require that an assessment on grain be collected at the first

point of sale. The board could purchase reinsurance to mitigate its financial risks. A producer could receive for an indemnification claim of 85 percent of the value of grain lost, instead of up to 90 percent as in current statute.

The board would have to set a minimum balance for the fund each year, which would be held in reserve to pay for administrative costs in case claims against the fund exceeded the fund's balance. The board would be required to post the minimum balance on its website.

The bill would repeal Agriculture Code, sec. 41.214, which in current statute allows grain producers to obtain a refund of the amount they paid in an assessment. CSHB 2504 instead would direct the board to make refunds after the minimum balance had been determined each year.

CSHB 2504 would require the board by rule to establish an administrative review process to informally review and resolve claims arising from an action of the board. A person could appeal a decision of the board to the agriculture commissioner and could appeal a decision of the commissioner in a Travis County district court.

CSHB 2504 would apply only to applications for a refund submitted on or after the effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 2504 would provide protection to farming communities against the possibility of a grain broker becoming insolvent. Grain warehouses, grain elevators, and other grain brokers are an essential part of agricultural communities. Farmers often deliver grain to a grain warehouse on a handshake deal, expecting payment once the warehouse has sold the grain to a third party. When a warehouse takes the grain but is unable to repay the producer, individual farmers can lose a great deal on a single crop cycle. Insolvent grain brokers can force farmers into bankruptcy, hurting sales at tractor dealerships, seed stores, and other establishments and putting local banks in the position of repossessing aging equipment and foreclosing on farms.

The Texas Grain Producer Indemnity Board was created in 2011 to respond to a series of grain brokers and grain elevators that became insolvent due to volatility in the commodities market after the recession at the turn of the last decade. This bill would help to fix the problems many of the grain producers had with the board and would provide a lower threshold for a referendum to pass.

CSHB 2504 is designed to return as high of a refund as possible to grain producers. By allowing the board to purchase reinsurance, the assessment would be spent on insurance premiums instead of being paid out directly to farmers affected by an insolvent grain warehouse. In anticipation of negotiating the lowest premiums possible, CSHB 2504 would lower the amount a farmer could recover in an indemnification claim from up to 90 percent to 85 percent. By making the assessment mandatory, the board could set a lower assessment and could further reduce the cost of the reinsurance premium by expanding the risk pool. Once the board determined a minimum balance each year, it would refund any amount above the minimum balance to grain producers.

The harm from an insolvent grain broker could be handled by the private sector if there were a critical mass of producers already paying into a fund. There currently are no readily available private options to provide protection for grain producers against the possibility of a grain broker becoming insolvent. The board is intended as an immediate solution, but its function one day could be handled by the private sector.

OPPONENTS SAY:

CSHB 2504 would hurt the grain market by using public funds to subsidize industries that the market had decided against. Grain producers already have rejected the referendum to enact the Grain Producer Indemnity Board. Grain producers also have failed to create a private co-op to protect against grain brokers becoming insolvent. The government should not create a mandatory assessment to enact measures that grain producers already have decided against.